

ASSEMBLY BILL

No. 652

Introduced by Assembly Member Levine

February 17, 2005

An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 652, as introduced, Levine. In home supportive services program: service delivery.

Under existing law, a county board of supervisors may elect to provide in-home supportive services to eligible recipients either by contracting with a nonprofit consortium for the delivery of those services, or establishing by ordinance a public authority to provide the services.

This bill would make technical nonsubstantive changes to the provisions relating to the delivery of in-home supportive services.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12301.6 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
- 4 county board of supervisors may, ~~at its option,~~ elect to do either
- 5 of the following:
- 6 (1) Contract with a nonprofit consortium to provide for the
- 7 delivery of in-home supportive services.

1 (2) Establish, by ordinance, a public authority to provide for
2 the delivery of in-home supportive services.

3 (b) (1) To the extent that a county elects to establish a public
4 authority pursuant to paragraph (2) of subdivision (a), the
5 enabling ordinance shall specify the membership of the
6 governing body of the public authority, the qualifications for
7 individual members, the manner of appointment, selection, or
8 removal of members, how long they shall serve, and other
9 matters as the board of supervisors deems necessary for the
10 operation of the public authority.

11 (2) A public authority established pursuant to paragraph (2) of
12 subdivision (a) shall be both of the following:

13 (A) An entity separate from the county, and shall be required
14 to file the statement required by Section 53051 of the
15 Government Code.

16 (B) A corporate public body, exercising public and essential
17 governmental functions and that has all powers necessary or
18 convenient to carry out the delivery of in-home supportive
19 services, including the power to contract for services pursuant to
20 Sections 12302 and 12302.1 and that makes or provides for direct
21 payment to a provider chosen by the recipient for the purchase of
22 services pursuant to Sections 12302 and 12302.2. Employees of
23 the public authority shall not be employees of the county for any
24 purpose.

25 (3) (A) As an alternative, the enabling ordinance may
26 designate the board of supervisors as the governing body of the
27 public authority.

28 (B) Any enabling ordinance that designates the board of
29 supervisors as the governing body of the public authority shall
30 also specify that no fewer than 50 percent of the membership of
31 the advisory committee shall be individuals who are current or
32 past users of personal assistance services paid for through public
33 or private funds or recipients of services under this article.

34 (C) If the enabling ordinance designates the board of
35 supervisors as the governing body of the public authority, it shall
36 also require the appointment of an advisory committee of not
37 more than 11 individuals who shall be designated in accordance
38 with subparagraph (B).

39 (D) Prior to making designations of committee members
40 pursuant to subparagraph (C), or governing body members in

1 accordance with paragraph (4), the board of supervisors shall
2 solicit recommendations of qualified members of either the
3 governing body of the public authority or of any advisory
4 committee through a fair and open process that includes the
5 provision of reasonable, written notice to, and a reasonable
6 response time by, members of the general public and interested
7 persons and organizations.

8 (4) If the enabling ordinance does not designate the board of
9 supervisors as the governing body of the public authority, the
10 enabling ordinance shall require the membership of the
11 governing body to meet the requirements of subparagraph (B) of
12 paragraph (3).

13 (c) (1) Any public authority created pursuant to this section
14 shall be deemed to be the employer of in-home supportive
15 services personnel referred to recipients under paragraph (3) of
16 subdivision (e) within the meaning of Chapter 10 (commencing
17 with Section 3500) of Division 4 of Title 1 of the Government
18 Code. Recipients shall retain the right to hire, fire, and supervise
19 the work of any in-home supportive services personnel providing
20 services to them.

21 (2) (A) Any nonprofit consortium contracting with a county
22 pursuant to this section shall be deemed to be the employer of
23 in-home supportive services personnel referred to recipients
24 pursuant to paragraph (3) of subdivision (e) for the purposes of
25 collective bargaining over wages, hours, and other terms and
26 conditions of employment.

27 (B) Recipients shall retain the right to hire, fire, and supervise
28 the work of any in-home supportive services personnel providing
29 services for them.

30 (d) A public authority established pursuant to this section or a
31 nonprofit consortium contracting with a county pursuant to this
32 section, when providing for the delivery of services under this
33 article by contract in accordance with Sections 12302 and
34 12302.1 or by direct payment to a provider chosen by a recipient
35 in accordance with Sections 12302 and 12302.2, shall comply
36 with and be subject to, all statutory and regulatory provisions
37 applicable to the respective delivery mode.

38 (e) Any nonprofit consortium contracting with a county
39 pursuant to this section or any public authority established
40 pursuant to this section shall provide for all of the following

1 functions under this article, but shall not be limited to those
2 functions:

3 (1) The provision of assistance to recipients in finding
4 in-home supportive services personnel through the establishment
5 of a registry.

6 (2) Investigation of the qualifications and background of
7 potential personnel.

8 (3) Establishment of a referral system under which in-home
9 supportive services personnel shall be referred to recipients.

10 (4) Providing for training for providers and recipients.

11 (5) Performing any other functions related to the delivery of
12 in-home supportive services.

13 (6) Ensuring that the requirements of the personal care option
14 pursuant to Subchapter 19 (commencing with Section 1396) of
15 Chapter 7 of Title 42 of the United States Code are met.

16 (f) (1) Any nonprofit consortium contracting with a county
17 pursuant to this section or any public authority created pursuant
18 to this section shall be deemed not to be the employer of in-home
19 supportive services personnel referred to recipients under this
20 section for purposes of liability due to the negligence or
21 intentional torts of the in-home supportive services personnel.

22 (2) In no case shall a nonprofit consortium contracting with a
23 county pursuant to this section or any public authority created
24 pursuant to this section be held liable for action or omission of
25 any in-home supportive services personnel whom the nonprofit
26 consortium or public authority did not list on its registry or
27 otherwise refer to a recipient.

28 (3) Counties and the state shall be immune from any liability
29 resulting from their implementation of this section in the
30 administration of the In-Home Supportive Services Program.
31 Any obligation of the public authority or consortium pursuant to
32 this section, whether statutory, contractual, or otherwise, shall be
33 the obligation solely of the public authority or nonprofit
34 consortium, and shall not be the obligation of the county or state.

35 (g) Any nonprofit consortium contracting with a county
36 pursuant to this section shall ensure that it has a governing body
37 that complies with the requirements of subparagraph (B) of
38 paragraph (3) of subdivision (b) or an advisory committee that
39 complies with subparagraphs (B) and (C) of paragraph (3) of
40 subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a

1 nonprofit consortium pursuant to this section shall be subject to
2 competitive bidding as otherwise required by law.

3 (l) (1) The department may adopt regulations implementing
4 this section as emergency regulations in accordance with Chapter
5 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
6 Title 2 of the Government Code. For the purposes of the
7 Administrative Procedure Act, the adoption of the regulations
8 shall be deemed an emergency and necessary for the immediate
9 preservation of the public peace, health and safety, or general
10 welfare. Notwithstanding Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government
12 Code, these emergency regulations shall not be subject to the
13 review and approval of the Office of Administrative Law.

14 (2) Notwithstanding subdivision (h) of Section ~~11364.1~~
15 ~~11346.1~~ and Section 11349.6 of the Government Code, the
16 department shall transmit these regulations directly to the
17 Secretary of State for filing. The regulations shall become
18 effective immediately upon filing by the Secretary of State.

19 (3) Except as otherwise provided for by Section 10554, the
20 Office of Administrative Law shall provide for the printing and
21 publication of these regulations in the California Code of
22 Regulations. Emergency regulations adopted pursuant to this
23 subdivision shall remain in effect for no more than 180 days.

24 (m) (1) In the event that a county elects to form a nonprofit
25 consortium or public authority pursuant to subdivision (a) before
26 the State Department of Health Services has obtained all
27 necessary federal approvals pursuant to paragraph (3) of
28 subdivision (j) of Section 14132.95, all of the following shall
29 apply:

30 (A) Subdivision ~~(e)~~ (d) shall apply only to those matters that
31 do not require federal approval.

32 (B) The second sentence of subdivision ~~(g)~~ (h) shall not be
33 operative.

34 (C) The nonprofit consortium or public authority shall not
35 provide services other than those specified in paragraphs (1), (2),
36 (3), (4), and (5) of subdivision ~~(d)~~ (e).

37 (2) Paragraph (1) shall become inoperative when the State
38 Department of Health Services has obtained all necessary federal
39 approvals pursuant to paragraph (3) of subdivision (j) of Section
40 14132.95.

1 (n) (1) One year after the effective date of the first approval
2 by the department granted to the first public authority, the Bureau
3 of State Audits shall commission a study to review the
4 performance of that public authority.

5 (2) The study shall be submitted to the Legislature and the
6 Governor not later than two years after the effective date of the
7 approval specified in subdivision (a). The study shall give special
8 attention to the health and welfare of the recipients under the
9 public authority, including the degree to which all required
10 services have been delivered, out-of-home placement rates,
11 prompt response to recipient complaints, and any other issue the
12 director deems relevant.

13 (3) The report shall make recommendations to the Legislature
14 and the Governor for any changes to this section that will further
15 ensure the well-being of recipients and the most efficient delivery
16 of required services.

17 (o) Commencing July 1, 1997, the department shall provide
18 annual reports to the appropriate fiscal and policy committees of
19 the Legislature on the efficacy of the implementation of this
20 section, and shall include an assessment of the quality of care
21 provided pursuant to this section.